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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

14 PETER DELVECCHIA, et al., )

15 )  
16 Plaintiffs, )

17 vs. )

18 )  
19 FRONTIER AIRLINES, INC., et al., )  
20 Defendants. )  
21 )

**Case No: 2:19-CV-01322-KJD-NJK**

**REPLY IN SUPPORT OF  
MOTION OF PLAINTIFF PETER  
DELVECCHIA FOR DESIGNATION AS  
“COVERED PERSONS” UNDER  
49 CFR §1520.7**

22 Plaintiff Peter DelVecchia (“Peter”), by counsel, hereby files this Reply in support of his  
23 Motion for an Order designating him and his counsel as “covered persons” under 49 CFR §1520.7  
24 [ECF No. 60]. As Defendant Frontier has made clear by its Response [ECF No. 63], it has no  
25 objection to a procedure that would allow Peter and his counsel to have access to the requested SSI  
26 materials and information, so long as the procedure does not violate the TSA’s regulations. *See* ECF  
27  
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No. 63, at 2. It argues, however, that “producing such documents [*sic*]<sup>1</sup> without TSA authorization would appear to be a contravention of 49 CFR Part 1520.” *Id.* The holding of *McSwain v. United States*, Case No. 2:15-cv-01321-GMN-GWF, 2016 WL 4530461 (D. Nev. Aug. 30, 2016), and the unambiguous language of Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, 120 Stat. 1355, 1382 (October 4, 2006), on which the *McSwain* decision is based, demonstrate that Frontier’s assumption is not valid. As noted in *McSwain*, Section 525(d) directs that a party to litigation who demonstrates the requisite need, as Peter has done, “shall be designated as a covered person under 49 CFR Part 1520.7 in order to have access to the SSI at issue in the case, provided the overseeing judge enters an order that protects the SSI from unauthorized or unnecessary disclosure and specifies the terms and conditions of access.” *See also*, *Ibrahim v. Department of Homeland Sec.*, 669 F.3d 983, 998-99 (9th Cir. 2012). The proviso is amply satisfied by the Protective Order already entered in this case. Moreover, the background check procedure described by Frontier is still available to TSA under Section 525(d) if it determines that one is necessary, as is the right to demonstrate to the Court that disclosure of the SSI would jeopardize some national security interest.

Thus, the procedure requested by Peter is fully authorized by Congress and satisfies the same national security concerns that the standard TSA review process does, albeit on a schedule that does not delay and/or inject uncertainty into the orderly pretrial process of this case. To date, TSA has authorized the disclosure of only a small portion of the information requested by Plaintiffs, and has not given any indication if or when more will be authorized, or whether it will be subject to redactions that might prevent access to information that Frontier agrees is relevant and should be produced. Even though the parties are jointly requesting an extension to the pretrial deadlines due,

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<sup>1</sup> The SSI in question encompasses more than documents, as certain information has also been requested in Interrogatories, *see* ECF No. 60, at 5-6.

1 *inter alia*, to the ongoing COVID-19 pandemic, instituting this orderly procedure for the disclosure of  
2 SSI is still in the best interests of the Court and the parties in this case. For those reasons, Peter  
3 respectfully requests that his motion be granted.  
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6 DATED this 2<sup>nd</sup> day of March, 2020.

7 /s/ John D. McKay

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